IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

FRIDAY, THE 1ST DECEMBER 2006 / 10TH AGRAHAYANA 1928

OP.No. 4404 of 1999(Y)

PETITIONER:

P.N. PILLAI,
S/O. LATE C.P. PILLAI,
AGED 62 YEARS,
RESIDING AT:
HP II/160, ONAMPALLIL,
HARIPAD.P.O.

BY ADV. SRI.T.C.GOVINDA SWAMY.

RESPONDENTS:
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1. **STATE OF KERALA, REPRESENTED BY**
   THE CHIEF SECRETARY TO THE GOVERNMENT OF KERALA,
   STATE SECRETARIAT,
   THIRUVANANTHAPURAM.

2. **THE SECRETARY TO GOVERNMENT OF KERALA,**
   DEPARTMENT OF REVENUE,
   STATE SECRETARIAT,
   THIRUVANANTHAPURAM.

BY SPL.GOVERNMENT PLEADER (TAXES) SRI. JULIAN XAVIER.
ADV.SRI.MARTIN G.THOTTAN.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 01/12/2006,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NO. 7644/1999 IN O.P. NO. 4404/1999

DISMISSED

01/12/2006. **SD/- A.K.BASHEER, JUDGE.**

APPENDIX

PETITIONER'S EXHIBIT:

EXT.P.1: COPY OF THE REPRESENTATION DTD. NIL. SUBMITTED BY THE PUNJA LAND HOLDERS TO THE GOVERNMENT.

//TRUE COPY//

prv.

A.K. Basheer, J.

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O.P.No. 4404 of 1999

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Dated this the 1st day of December, 2006.

J U D G M E N T

Petitioner is a land holder within the meaning of Section 3 (b) of the Kerala Land Tax Act 1961. He owns 63 cents of punja land within the territorial limits of Haripad town Panchayat. He is also in possession of 2.28 acres of punja land within the limits of Pallippad Panchayat. These lands fall within the limits of Alleppey District.

2. The prayer in the original petition is extracted hereunder:

> "to declare that Section 6(1) of the Kerala Land Tax Act, 1961 to the extent it classifies the land for the purpose or levying of basic tax, with reference to the area, where the land is situated, and treats those who hold the land in Town Panchayat, Municipal Council and Municipal Corporation area different, is arbitrary, discriminatory, unreasonable and hence unconstitutional, illegal and void."

3. The grievance of the petitioner is that the above two parcels of land which lie adjoining to each other are classified differently for the purpose of levying land tax, for the sole reason that they fall within the territorial limits of two different statutory local bodies viz., Haripad Town Panchayat and Pallipad Grama Panchayat. Petitioner is compelled to pay land

tax at a higher rate for the land he owns in Haripad Town Panchayat. However, for the same category of land in Pallipad Grama Panchayat, he is levied tax at a lesser rate. The contention of the petitioner is that since both are punja lands, it is not just, legal or proper to levy tax at two different rates. Petitioner contends that levy of tax at different rates for "the lands of similar type with similar yielding capacity" is totally arbitrary and violative of the constitutional mandates. I am afraid the contentions raised by the petitioner are totally misconceived.

4. As rightly pointed out by the respondents "land revenue" is not taken into account for the purpose of the charging provision under the Kerala Land Tax Act, which is enacted by invoking the power under Entry 49 of List II of the VIIth Schedule to the Constitution of India. While Entry 45 in Schedule VII deals with land revenue including assessment and collection of revenue, maintenance of land records, survey for revenue purposes and records of rights and alienation of revenue etc., Entry 49 does not take in Entry 45 within its fold. It is admitted by the respondents that some consideration is given to the income and position of lands. But such consideration is only for the purpose of measuring the levy alone.

5. Section 5 is the charging section under the Land Tax Act. Section 6 coupled with Section 7 deal with the measure of levy. Basic tax is levied on all lands at the rates prescribed under Section 6, which makes a clear and intelligible classification in regard to the situational position of the land by classifying it into Panchayats, Town Panchayats, Municipal areas and Municipal Corporation areas. Section 6A deals with procedure for the levy. It is contended that the attempt

of the petitioner to co-relate levy with income from the land is totally misconceived. Derivation of income though is a facet of holding of the property, petitioner cannot be heard to say that the levy of tax should be based on the yield or income of such land, since the levy under the land Tax Act is under Entry 49 of List II of Schedule VII. In that view of the matter, the contention raised by the petitioner that tax should have a co-relation to the use to which it is put or that it should have some nexus to the income yielding capacity of the land cannot be sustained.

6. Petitioner has invited my attention to the decisions of their Lordships of the Supreme Court in Anandji Haridas & Co.Pvt.Ltd. v. S.P.Kasture & Ors. (AIR 1968 SC 565) and M/s.S.Kodar v. State of Kerala (AIR 1974 SC 2272) in support of the above contentions. But I am afraid the dictum laid down in those decisions will not be of any help to the petitioner to sustain his contentions.

Original Petition fails . It is accordingly dismissed.

A.K. Basheer
Judge.

an.

A.K. Basheer, J.

O.P.No.4404/1999

Judgment

1/12/2006